



U.S. Department of Justice

*United States Attorney
Southern District of New York*

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November 5, 2018

BY ECF

The Honorable Paul A. Engelmayer
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: *ACLU, et al. v. DOD, et al.*, No. 17 Civ. 3391 (PAE)

Dear Judge Engelmayer:

I write respectfully on behalf of Defendants the Department of Defense (“DOD”) and Department of State (“DOS”) in the above-referenced action brought pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). We write with Plaintiffs’ consent to request a modification of the schedule currently in place relating to the parties’ remaining summary judgment briefing, as set forth below. *See* Dkt. No. 93. The reason for Defendants’ request is DOD’s anticipated processing of a limited number of additional documents, and the parties’ need to subsequently confer about the scope of the documents to be litigated.

Pursuant to the current schedule, on October 19, 2018, Plaintiffs identified the DOD and DOS documents that Plaintiffs continue to challenge. *Id.* As a result of Defendants’ recent releases of additional information, the parties have been able to further narrow the number of documents in dispute. Defendants’ combined opposition and reply brief relating to the still-disputed documents is due on November 7, 2018. *Id.* The parties have also been discussing the results of Defendant the Central Intelligence Agency’s (“CIA’s”) searches for documents responsive to the FOIA request. *E.g.*, Dkt. No. 94. On November 1, the Government informed Plaintiffs that the CIA has recently located in its searches certain responsive documents that it referred to DOD for processing. DOD has not previously released these documents to Plaintiffs, and the parties do not yet know whether Plaintiffs will challenge DOD’s withholding of any information from these documents referred by CIA. The parties have conferred and agree that it would be most efficient to consolidate the briefing of all possible issues relating to DOD records. Therefore, Defendants request, with Plaintiffs’ consent, modification of the briefing schedule currently in place as follows:

- November 30, 2018: DOD completes its FOIA release of documents referred by CIA
- December 12, 2018: Plaintiffs inform the Government which of the referred documents, if any, Plaintiffs intend to challenge
- December 21, 2018: DOS and DOD file their opposition/reply brief, if necessary (25 pages)
- January 16, 2019: Plaintiffs file their reply brief, if necessary (25 pages)

We thank the Court for its consideration of this matter.

Respectfully submitted,

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United States Attorney

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cc: Counsel of record (by ECF)